

DELAWARE SECURITIES ACT

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§ 7301. Short title; purpose.

(a) This chapter shall be known and may be cited as the “Delaware Securities Act.”

(b) The purpose of the Delaware Securities Act is to prevent the public from being victimized by unscrupulous or overreaching broker-dealers, investment advisers or agents in the context of selling securities or giving investment advice, as well as to remedy any harm caused by securities law violations. This prophylactic and remedial purpose shall be deemed of paramount importance in the interpretation of the provisions of this chapter and particularly in any judicial review of sanctions or penalties imposed by the Securities Commissioner and of motions or requests by persons affected to stay such sanctions or penalties.

§ 7302. Definitions.

(a) Generally.--When used in this chapter, unless the context otherwise requires:

(1) “Attorney General” means the Attorney General of the State or the Attorney General's duly appointed deputy.

(2) “Agent” means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. “Agent” does not include an individual who represents (A) an issuer in (i) effecting transactions in a security exempted by § 7309(a)(1), (2), (3), (10), or (11) of this title, (ii) effecting transactions exempted by § 7309(b) of this title, (iii) effecting transactions in a covered security as described in § 18(b)(3) and (4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r], or (iv) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; (B) a broker-dealer in effecting transactions in this State limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]; or (c) an issuer or a member of a bona fide agricultural cooperative whose securities are exempt from registration under § 7309(a)(12) of this title. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(3) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the broker-dealer's own account.

“Broker-dealer” does not include:

a. An agent;

b. An issuer;

c. A bank, savings institution or trust company, to the extent that these entities are

exempt or excluded from broker-dealer registration requirements under federal securities law;

d. A person who has no place of business in this State and effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

e. An issuer or an individual who represents an issuer or a member of such issuer provided said issuer is exempt from registration under § 7309(a)(12) of this title.

(4) "Commissioner" means the Securities Commissioner, the principal executive officer of the Division of Securities designated in § 7325 of this title.

(5) "Federal covered adviser" means a person who is registered under § 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3].

(6) "Federal covered security" means any security that is a covered security under § 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations promulgated thereunder.

(7) "Fraud," "deceit," and "defraud" are not limited to common-law deceit.

(8) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include (A) an investment adviser representative; (B) a bank, savings institution or trust company; (C) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of such person's profession; (D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them; (E) a publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (F) any person who is a federal covered adviser; or (G) such

other persons not within the intent of this subsection as the Commissioner may by rule or order designate.

(9) "Investment adviser representative" means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who has a place of business located in this State and is employed by or associated with a federal covered adviser; and who does any of following: (A) makes any recommendations or otherwise renders advice regarding securities, (B) manages accounts or portfolios of clients, (C) determines which recommendation or advice regarding securities should be given, (D) solicits, offers or negotiates for the sale of or sells investment advisory services, or (E) supervises employees who perform any of the foregoing.

(10) "Issuer" means any person who issues or proposes to issue any security.

(11) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(12) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(13) "Promoter" includes:

a. Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer;

b. Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(14) "Public interest" means that it shall appear to the Commissioner that the action taken or sanction imposed will further the purpose of this chapter.

(15) "Sale" or "sell" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value.

a. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

b. A purported gift of assessable stock is considered to involve an offer and sale.

c. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

d. The terms defined in this subsection do not include any bona fide pledge or loan; any stock dividend whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; any act incident to a vote by stockholders (or approval pursuant to § 228 of Title 8) pursuant to the certificate of incorporation, or the provisions of Title 8, on a merger, consolidation, reclassification of securities, dissolution, or sale of corporate assets in consideration of the issuance of securities of the same or another corporation; or any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(16) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(17) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract, including pyramid promotion which includes any plan or operation for the sale or distribution of property, services, or any other thing of value wherein a person for a consideration is offered an opportunity to obtain a benefit which is based in whole or in part on the inducement, by himself or herself or by others, of additional persons to purchase the same or a similar opportunity; voting-trust certificate; certificate of deposit for a security; certificate of interest of participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; options on commodities; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate, for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(18) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(b) Principles of definition.

(1) In this chapter when the word “means” is employed in defining a word or term, the definition is limited to the meaning given.

(2) In this chapter when the word “includes” is employed in defining a word or term, the definition is not limited to the meaning given, but in appropriate cases the word or term may be defined in any way not inconsistent with the definition given.

(3) If a word used in this chapter is not defined herein, it has its commonly accepted meaning, and may be defined as appropriate under § 7325(b) of this title.

§ 7303. Fraud.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

§ 7304. Registration of and notice filing for securities.

It is unlawful for any person to offer or sell any security in this State unless (1) it is registered under this chapter; (2) the security or transaction is exempted under § 7309 of this title; or (3) it is a federal covered security for which a notice filing has been made pursuant to the provisions of § 7309A of this title.

§ 7305. Registration of securities by coordination.

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to the information specified in § 7307(b) of this title and the consent to service of process required by § 7327 of this title, and a filing fee as established by the Commissioner under § 7306(e) of this title:

(1) One copy of the latest form of prospectus filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], unless the Commissioner requires additional copies;

(2) If the Commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the Commissioner requests, any other information, or copies of other documents, filed under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] or with other states or regulatory agencies;

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the 1st business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under § 7308 of this title;

(2) The registration statement has been on file with the Commissioner for at least 10 days; and

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions is then on file and the offering is made within those limitations. The registrant shall promptly notify the Commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification posteffective amendment with the respect to the price amendment, the Commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if the Commissioner promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when notifying by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of

the time of its entry.

The Commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (c)(2) and (c)(3) of this section. If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied.

(d) Any security for which the documents required by any regulation adopted by the Securities and Exchange Commission under sections 3(b) or 3(c) of the Securities Act of 1933 [15 U.S.C. § 77c(b) or (c)] have been filed with said Commission in connection with the same offering may be registered by coordination upon compliance with subsections (b) and (c) of this section in such manner as the Commissioner by rule or order may prescribe. For purposes of this subsection, the terms “federal registration statement” and “federal prospectus” shall include the documents (including the offering circular, if any) which may be filed with the Securities and Exchange Commission pursuant to any such regulation.

§ 7306. Registration of securities by qualification.

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in § 7307(b) of this title and the consent to service of process required by § 7327 of this title:

(1) The name of the issuer, its address, and form of organization; the state and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: The person's name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by the person as of a specified date within 30 days of the filing; the amount of the securities covered by the filing to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

(3) With respect to persons covered by subsection (b)(2) of this section: The remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate;

(4) With respect to any person owning of record, or beneficially 10 percent or more of the outstanding shares of any class or equity security of the issuer; the information specified in subsection (b)(2) of this section other than the person's occupation;

(5) With respect to every promoter if the issuer was organized within the past 3 years; the information specified in subsection (b)(2) of this section, any amount paid within that period or intended to be paid to him or her, and the consideration for any such payment;

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution or in a distribution in which only part of the securities are being distributed by the issuer: The person's name and address; the amount of securities of the issuer held as of the date of the filing; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of the person's reasons for making the offering;

(7) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class or persons other than the underwriters with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stating the sources of any such funds; and, if any part of the proceeds is

to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsection (b)(2), (4), (5), (6), or (8) of this section and by any person who holds or will hold 10 percent or more in the aggregate of any such options;

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) Three copies of the prospectus required by subsection (d) of this section, together with a copy of any other prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him or her, if any such person is named as having prepared or certified the report or evaluation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) A balance sheet of the issuer as of a date within the last quarter prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the

period of the issuer's and predecessor's existence of less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required of that business for the registrant;

(17) Such additional information as the Commissioner requires by rule, regulation, or order.

(c) A registration statement under this section becomes effective when the Commissioner so orders.

(d) As a condition of registration under this section, a prospectus containing any designated part of the information specified in subsection (b) of this section shall be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to the person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any other writer or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs; provided, however, that subsection (d)(1) of this section may be satisfied by the use of a preliminary prospectus, so designated and bearing such legend as the Commissioner may prescribe, if a final prospectus is sent or given to each recipient of the preliminary prospectus before or concurrently with whichever event in subsection (d)(2), (3) and (4) of this section first occurs.

(e) Every person filing a registration statement under this section, or under § 7305 of this title, shall pay a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000. In addition, the Commissioner may require reasonable fees for miscellaneous costs absorbed by the Securities Division for the printing, copying, filing or transcription of other documents.

(f) The Commissioner may exercise rule making authority under § 7325(b) of this title to establish special registration procedures for limited offerings. These procedures, including filing requirements and fees, may differ from the qualification procedures set forth above.

§ 7307. Provisions applicable to registration of securities generally.

- (a) A registration statement may be filed by the issuer, and the other person on whose behalf the offering is to be made, or a registered broker-dealer.
- (b) Every registration statement shall specify the amount of securities to be offered in this State; the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.
- (c) The Commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (d) Every registration statement is effective for any period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, except during the time a stop order is in effect under § 7308 of this title. The registration statement may be withdrawn only in the discretion of the Commissioner.
- (e) So long as a registration statement is effective, the Commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.
- (f)(1) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Commissioner so orders. Every person filing such an amendment shall pay a filing fee, in accordance with § 7306(e) of this title, with respect to the additional securities proposed to be offered.
- (2) The Commissioner may require that registrations of securities be renewed annually. Where the Commissioner finds that an additional security from the same issuer has different characteristics from the security first registered, such as being a separate portfolio or series of an investment company or mutual fund, the Commissioner may require separate registration and renewal of the additional security.
- (g) The Commissioner may require by rule, regulation or order any issuer of securities registered under this chapter or those offered pursuant to § 7309 of this title to file periodic reports with the Commissioner, and to provide them to holders of those

securities.

§ 7308. Stop orders.

(a) Subject to § 7309A(e) of this title, the Commissioner may issue a stop order prohibiting the offering and sale of a security, or the Commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement, if the Commissioner finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under § 7307(f) of this title as of its effective date, or any report under § 7307(e) of this title is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or permit or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering; but the Commissioner may not institute the proceeding against an effective registration statement under this subsection more than one year from the date of the order or injunction relied on, and may not enter an order under this subsection on the basis of an order or injunction entered under any other state act unless that order or injunction is based on facts which would currently constitute a ground for stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(7) The applicant or registrant has failed to pay the proper filing fee; but the

Commissioner shall vacate any such order when the deficiency has been corrected; or

(8) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by § 7305(b)(4) of this title.

(b) The Commissioner may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to the Commissioner when the registration statement became effective, unless the proceeding is instituted within the next 90 days.

(c) The Commissioner may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Commissioner shall promptly notify each person specified in subsection (d) that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination.

(d) No stop order may be entered under any part of this section, except the first sentence of subsection (c) of this section, without appropriate prior notice to the applicant making the filing, the issuer, and the person on whose behalf the securities are to be or have been offered, opportunity for hearing, and written findings of fact and conclusions of law.

(e) The Commissioner may vacate or modify a stop order upon finding that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

§ 7309. Exemptions.

(a) The following securities are exempted from §§ 7304, 7309A and 7312 of this title:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporation or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan association organized and supervised under the laws of any state and authorized to do business in this State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State;
- (6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this State;
- (7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is subject to the jurisdiction of the Interstate Commerce Commission; a registered holding company under the Public Utility Holding Company Act of 1935 [15 U.S.C. § 79 et seq.] or a subsidiary of such a company within the meaning of that Act; regulated in respect of its rates and charges by a governmental authority of the United States or any state; or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
- (8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Pacific Coast Stock Exchange, the Midwest Stock Exchange, or the Philadelphia-Baltimore-Washington Stock Exchange or any other exchange which the Commissioner deems to have substantially the same standards for listing as required by the above mentioned exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce, local industrial development corporation, or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such

paper or of any such renewal;

(11) Any investment contract issued after the effective date of this act in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan if the Commissioner is notified in writing 30 days before the inception of the plan, or, with respect to plans which are in effect on July 1, 1973, within 60 days, thereafter (or within 30 days before they are reopened if they are closed on July 1, 1973);

(12) Any security issued by a bona fide agricultural cooperative operating in this State that is organized under Chapter 85 of Title 3 of this Code or as a foreign cooperative association organized under the law of another state that has been duly qualified to transact business in this State;

(13) Any security traded pursuant to the National Association of Securities Dealers Automated Quotations System for which the Commissioner by rule has determined that registration is not necessary for the protection of investors.

(b) The following transactions are exempted from §§ 7304, 7309A and 7312 of this title:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], in a security of a class that has been outstanding in the hands of the public for at least 90 days, provided, at the time of the transaction:

a. The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

b. The security is sold at a price reasonably related to the current market price of the security;

c. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

d. A nationally recognized securities manual designated by rule or order of the Commissioner or a document filed with the Securities and Exchange Commission that is publicly available through the SEC's Electronic Data Gathering and Retrieval System (EDGAR) and contains:

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;
 3. An audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and
 4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and
- e. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.], or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:
1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.];
 2. The issuer of the security has been engaged in continuous business (including predecessors) for at least 3 years; or
 3. The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.
- (3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the Commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offerer to not more than 25 persons [other than those designated in paragraph (8) of this subsection] in this State during any period of 12 consecutive months, whether or not the offerer or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State, other than those designated in paragraph (8) of this subsection, are purchasing for investment; but the Commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition relating to investment intent; provided, however, the Commissioner may by rule or order exempt transactions that are exempt under federal securities laws or regulations;

(10) Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, the number of subscribers does not exceed 10, and no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of the convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or the issuer first files a notice specifying the terms of the offer and the Commissioner does not by order disallow the exemption within the next 5 full business days;

(12) Any offer (but not a sale) of a security for which a registration statement has been filed under this chapter if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending, and if the offerer complies with § 7306(d) of this title;

(13) Any offer or sale of a security by or through a registered broker-dealer if such offer or sale is not directly or indirectly for the benefit of the issuer or a person who is known or should reasonably be known to such broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; the security is not part of an unsold allotment or subscription taken by a participant in a

distribution directly or indirectly for the benefit of the issuer or a person who is known or should reasonably be known by such broker-dealer to be the record or beneficial owner of 10 percent or more of the outstanding voting securities of the issuer; and no administrative stop order or similar order or permanent or temporary injunction of any court of competent jurisdiction is in effect under this subtitle or under any federal or state act against the offering or sale of the security or any security of the same class.

(c) The Commissioner may by rule or order deny or revoke any exemption in subsection (a)(9) or (a)(11) or in subsection (b) of this section, either generally or with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order the Commissioner shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for a hearing. If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated § 7304 or § 7312 of this title by reason of any offer or sale effected after the entry of an order under this subsection if that person sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

(d) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§ 7309A. Federal covered securities.

(a) The Commissioner, by rule or order, may require the filing of any or all of the following documents with respect to a covered security under § 18(b)(2) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(2)]:

(1) Prior to the initial offer of such federal covered security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.] (or, in lieu of filing such registration statement, a notice as prescribed by the Commissioner by rule or order), together with a consent to service of process signed by the issuer and with a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000. In addition, the Commissioner may require reasonable fees for miscellaneous costs absorbed by the Securities Division for printing, copying, filing or transcription of other documents;

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], which shall be filed concurrently with the Commissioner; and

(3) A report of the value of such covered securities offered or sold in this State, together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000; provided, however, that if the filing fee paid is equal to \$1,000, no report of the value of such covered securities offered or sold in this State need be filed.

(b) With respect to any security that is a covered security under § 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(D)], the Commissioner, by rule or order, may require the issuer to file a notice on S.E.C. Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of such covered security in this State, together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000.

(c) The Commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. § 77a et seq.], with respect to a covered security under § 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)], together with a filing fee as provided by rule or regulation, but in no case shall the fee be less than \$200 or more than \$1,000.

(d) The Commissioner may require that filings made and fees paid pursuant to subsections (a), (b) and (c) of this section be renewed annually. Where the Commissioner finds that an additional security from the same issuer has different characteristics from the security as to which the first filing was made, such as being a separate portfolio or series of an investment company or mutual fund, the Commissioner may require separate filing, fee payment and renewal for the additional security.

(e) The Commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under § 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)] , if it finds that (1) the order is in the public interest and (2) there is a failure to comply with any condition established under this section.

(f) The Commissioner, by rule or order, may waive any and all provisions of this section.

(g) Notwithstanding the provisions of this section, until October 10, 1999, the Commissioner may require the registration of any federal covered security for which the fees required by this section have not been paid promptly following written notification from the Commissioner regarding any nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if they are remitted to the

Commissioner within 15 days following such person's receipt of written notification from the Commissioner.

§ 7310. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the Commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

§ 7311. Unlawful representations concerning registration, notice filing or exemption.

(a) Neither the fact that a notice filing under this chapter, an application for registration under this chapter, or a registration statement under this chapter has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the Commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).

§ 7312. Filing of sales and advertising literature.

The Commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by § 7309 of this title or is a federal covered security.

§ 7313. Registration and notice filing requirements for broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives.

(a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless the person is registered under this chapter.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him or her an agent, the

agent as well as the broker-dealer or issuer shall promptly notify the Commissioner. Every registration of an agent expires when the agent terminates the agent's connection with a broker-dealer or issuer, though the person may still be subject to disciplinary action by the Commissioner under § 7316(e) of this title. When such an agent begins a connection with another broker-dealer or another issuer, the agent shall file an application for initial registration as provided in § 7314(a) of this title and shall pay a filing fee prescribed by § 7314(c) of this title. Unless the Commissioner takes action under § 7316 or § 7315 of this title, the said agent registration shall become effective 30 days after receipt of a complete application by the Commissioner (or by the Commissioner's designee) and shall continue in effect until it expires under the provisions of subsection (f) of this section, or under the provisions of this subsection, whichever would earlier occur. The Commissioner shall be empowered to waive the 30-day period at the Commissioner's discretion.

(c) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) The person is registered under this chapter; or

(2) The person has no place of business in this State; and

a. The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.], other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Commissioner; or

b. During the preceding 12-month period has had not more than 5 clients, other than those specified in subparagraph a., who are residents of this State.

(d) It is unlawful for any person required to be registered as an investment adviser under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser representative as well as the investment adviser shall promptly notify the Commissioner. Every registration of an investment adviser representative expires when the investment adviser representative terminates his or her connection with an investment adviser, though the person may still be subject to disciplinary action by the Commissioner under § 7316(e) of this title. When such an investment adviser representative begins a connection with another investment adviser or federal covered adviser, the representative shall, unless exempt from registration, file an application for initial registration as provided in § 7314(a) of this title and shall pay a filing fee prescribed by § 7314(c) of this title. Unless the Commissioner takes action under

§ 7316 or § 7315 of this title, the said investment adviser representative registration shall become effective 30 days after receipt of a complete application by the Commissioner (or by the Commissioner's designee) and shall continue in effect until it expires under the provisions of subsection (f) of this section, or under the provisions of this subsection, whichever would earlier occur. The Commissioner shall be empowered to waive the 30-day period at the Commissioner's discretion.

(e) It is unlawful for any federal covered adviser to employ, supervise or associate with an investment adviser representative having a place of business located in this State unless such investment adviser representative is registered under this chapter or is exempt from registration. When such an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the Commissioner. Every registration of such an investment adviser representative expires when the investment adviser representative terminates that investment advisor representative's connection with the federal covered adviser, though the person may still be subject to disciplinary action by the Commissioner under § 7316(e) of this title. When such an investment adviser representative begins a connection with another federal covered adviser or investment adviser, the representative shall, unless exempt from registration, file an application for initial registration as provided in § 7314(a) of this title and shall pay a filing fee prescribed by § 7314(c) of this title. Unless the Commissioner takes action under § 7316 or § 7315 of this title, the said investment adviser representative registration shall become effective 30 days after receipt of a complete application by the Commissioner (or by the Commissioner's designee) and shall continue in effect until it expires under the provisions of subsection (f) of this section, or under the provisions of this subsection, whichever would earlier occur. The Commissioner shall be empowered to waive the 30 day period at the Commissioner's discretion.

(f) Every registration or notice filing under this section or under § 7314 of this title expires December 31st unless renewed.

(g) Except with respect to advisers whose only clients are those described in subsection (c)(2) of this section, it is unlawful for any federal covered adviser to conduct advisory business in this State unless such person complies with the provisions of § 7314(b) of this title. Notwithstanding the provisions of this subsection, until October 10, 1999, the Commissioner may require the registration of any federal covered adviser for which fees required by § 7314 have not been paid promptly following written notification from the Commissioner regarding the nonpayment or underpayment of any such fee. A federal covered adviser shall be considered to have promptly paid such fees if they are remitted to the Commissioner within 15 days following such person's receipt of written notification from the Commissioner.

§ 7314. Registration and notice filing procedure for broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives.

(a)(1) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial registration by filing with the Commissioner or the Commissioner's designee an application together with a consent to service of process pursuant to § 7327 of this title. The application shall contain whatever information the Commissioner by rule requires concerning such matters as: (A) the applicant's form and place of organization; (B) the applicant's proposed method of doing business; (C) the qualifications and business history of the applicant; in the case of the broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; (D) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; (E) subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o] and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a], the applicant's financial condition and history; and (F) any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser. The Commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in this State. If no denial order is in effect and no proceeding is pending under § 7316 of this title, registration becomes effective at noon of the 30th day after a complete application is filed. The Commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director, or a person occupying a similar status or performing similar functions.

(2) A broker-dealer or investment adviser may obtain a renewal registration by filing with the Commissioner an application containing whatever information the Commissioner by rule requires to keep current the information contained in the application for initial registration. A broker-dealer, investment adviser or issuer may obtain a renewal registration for the agents or investment adviser representatives associated with it by filing with the Commissioner an application containing the names of the agents or investment adviser representatives associated with it and a certification that, to the best knowledge, information and belief of such broker-dealer, investment adviser or issuer, there has been no change in the information contained in such agent's or investment adviser representative's application for registration then currently in effect, or if there has been any change, specifying the same. Every application for renewal registration shall become effective on the date it is received by the Commissioner or upon the expiration of the previous registration, whichever date is later.

(b)(1) Except with respect to federal covered advisers whose only clients are those described in § 7313(c)(2) of this title, a federal covered adviser shall file with the Commissioner, prior to acting as a federal covered adviser in this State, such documents as have been filed with the Securities and Exchange Commission as the Commissioner, by rule or order, may require.

(2) A notice filing under this section expires on December 31st (unless renewed) and may be renewed by filing prior to its expiration such documents as have been filed with the Securities and Exchange Commission as required by the Commissioner, along with a renewal fee.

(3) A federal covered adviser may terminate a notice filing by providing the Commissioner notice of such termination, which shall be effective upon receipt by the Commissioner.

(4) The Commissioner, by rule or order, may waive any or all of the provisions of this section.

(5) The Commissioner may suspend the investment advisory activities in this State of any federal covered adviser that fails to comply with the requirements of this section.

(c) Fees.--(1) Broker-dealers and agents.--Every applicant for initial or renewal registration as a broker-dealer shall pay a filing fee of \$250 and every applicant for initial, transfer or renewal registration as an agent shall pay a registration fee of \$50.

(2) Investment advisers and investment adviser representatives.--Every applicant for initial or renewal registration as an investment adviser who is subject to registration under this chapter shall pay a filing fee of \$250, and every applicant for initial, transfer or renewal registration as an investment adviser representative who is subject to registration under this chapter shall pay a registration fee of \$50.

(3) Federal covered advisers.--Every person acting as a federal covered adviser in this State shall pay an initial and renewal notice filing fee of \$250.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(e) The Commissioner may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o], and establish minimum financial requirements for investment advisers, subject to the limitations of § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(f) The Commissioner may, by rule or order, require registered broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities, to post bonds in amounts as the Commissioner may prescribe, subject to the limitations of § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o] (for broker-dealers) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (for investment advisers), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the Commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under § 7323 of this title and, if the Commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of § 7323(e) of this title.

§ 7315. Postregistration provisions for broker-dealers, investment advisers and federal covered advisors.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Commissioner prescribes by rule or order, except as provided by § 15 of the Securities Exchange Act 1934 [15 U.S.C. § 78o] (in the case of a broker-dealer) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for such period as the Commissioner prescribes by rule or order.

(b) With respect to investment advisers, the Commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Commissioner in the Commissioner's discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 [15 U.S.C. § 80b-1 et seq.] and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered broker-dealer and every registered investment adviser shall file such financial reports as the Commissioner may prescribe by rule or order, except as provided by § 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o] (in the case of a broker-dealer) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (in the case of an investment adviser).

(d) If the information contained in any document filed with the Commissioner is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the

Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under § 7313(b), (d) or (e) of this title.

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the Commissioner, within or without this State, as the Commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Commissioner, insofar as the Commissioner deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.].

§ 7316. Denial, revocation, suspension, cancellation and withdrawal of registration of broker-dealers, agents, investment advisers and investment adviser representatives.

(a) The Commissioner may by order deny, suspend or revoke any registration if the Commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(2) Has wilfully violated or wilfully failed to comply with any provision of this chapter; or

(3) Has been convicted of a felony, infamous crime, or other crime involving moral turpitude; or

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

(5) Is the subject of a cease and desist order of the Commissioner or of an order of the Commissioner denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative; or

(6) Is the subject of an order entered within the past 10 years by the securities

administrator of any other state or by the Securities and Exchange Commission either ordering the person to cease and desist from engaging in or continuing any conduct or practice involving any aspect of the securities business, or suspending, denying or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter; or is suspended or expelled from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.] either by action of a national securities exchange or national securities association, the effect of which action has not been stayed by administrative or judicial order; or is the subject of a United States post office fraud order; or

(7) Has engaged in dishonest or unethical practices within or outside this State; or

(8) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature; or

(9) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b) of this section; or

(10) Has failed reasonably to supervise (A) the person's agents or employees if the person is a broker-dealer or broker-dealer agent with supervisory responsibilities, or (B) the person's adviser representatives or employees if the person is an investment adviser or investment adviser representative with supervisory responsibilities, and the Commissioner may infer such failure from an agent's, investment adviser representative's or employee's violations; or

(11) Has failed to pay the proper filing fee, but the Commissioner shall vacate any denial or suspension order when the deficiency has been corrected; or

(12) Has violated or failed to comply with any lawful order issued by the Commissioner; or

(13) Has within the past 10 years been a partner, officer, director, controlling person or any person occupying a similar status or performing similar functions in a broker-dealer or investment adviser whose registration in this State or any state, or with the Securities and Exchange Commission, has been revoked for disciplinary reasons, or whose membership in a national securities exchange or national securities association has been terminated for disciplinary reasons.

(b) The following provisions govern the application of subdivision (9) of subsection (a) of this section:

(1) The Commissioner may not enter an order against a broker-dealer or investment adviser on the basis of the lack of qualification of any person other than (A) the broker-dealer or investment adviser himself or herself (if the person is an individual); (B) an agent of the broker-dealer; or (c) an investment adviser representative.

(2) The Commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training in or knowledge of securities, or both.

(3) The Commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer and that an investment adviser representative who will work under the supervision of a registered investment adviser or federal covered adviser need not have the same qualifications as an investment adviser or federal covered adviser.

(4) The Commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants.

(c) The Commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of an order, the Commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefore and that within 15 days after the receipt of a written request the matter will be set down for a hearing. If no hearing is requested and none is ordered by the Commissioner, the order will remain in effect until it is modified or vacated by the Commissioner. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the Commissioner may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 90 days after receipt of an application to withdraw or within such shorter period of time as the Commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or impose conditions upon the withdrawal is instituted within 90 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Commissioner by order determines. If no proceeding is pending or instituted, a withdrawal automatically becomes effective, but the Commissioner may nevertheless institute a revocation or suspension proceeding, and impose fines, costs

and restitution, within 2 years after withdrawal becomes effective and enter a revocation or suspension as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) of this section without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative), (2) opportunity for a hearing, and (3) written findings of fact and conclusions of law. The Commissioner or the Commissioner's designee shall control the procedures and the conduct of the parties at the hearing.

(g) The Commissioner shall, upon notice and hearing as further defined by subsection (c) of this section, have the right to fine any broker-dealer, agent, investment adviser or investment adviser representative in an amount not to exceed \$10,000 for each and every violation of this chapter, plus the costs of investigation and prosecution.

§ 7317. Advisory activities.

(a)(1) It is unlawful for an investment adviser, federal covered adviser or investment adviser representative, all as defined in this chapter, to employ any device, scheme or artifice to defraud another person, or to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon another person.

(2) It is unlawful for an investment adviser, federal covered adviser or investment adviser representative, all as defined in this chapter, in connection with giving investment advice or otherwise acting as an investment adviser, federal covered adviser or investment adviser representative to make any untrue statement of fact that a reasonable client or prospective client would deem material or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) It is unlawful for any investment adviser or investment adviser representative to enter into, extend or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser or investment adviser representative shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of a contract may be made by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(3) That the investment adviser or investment adviser representative, if a partnership, shall notify the other party to the contract of any change in the membership or the

partnership within a reasonable time after the change.

Subsection (b)(1) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subsection (b)(2) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of a client if:

(1) The Commissioner by rule prohibits custody; or

(2) In the absence of rule, the investment adviser or investment adviser representative fails to notify the Commissioner that such adviser or representative has or may have custody.

§ 7318. Trading markets.

(a) It is unlawful for any broker-dealer, agent, investment adviser or investment adviser representative to effect transactions in, trade or quote any security unless such security is covered by regulations under the Securities Exchange Act of 1934 [15 U.S.C. § 78a et seq.] or unless the filing provisions of this chapter have been complied with in regard to such security.

(b) Except as provided otherwise by § 18 of the Securities Act of 1933 [15 U.S.C. § 77r], the Commissioner is empowered to suspend trading in any security for a period of 10 days in the public interest.

§ 7319. Investigations and subpoenas.

(a) The Commissioner in the Commissioner's own discretion may make such public or private investigations within or outside of this State as deemed necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, may require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all

the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this chapter or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Commissioner or any designated officer may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner deems relevant or material to the inquiry. The Commissioner's authority to subpoena witnesses and documents outside the State shall exist to the maximum extent permissible under federal constitutional law.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Court of Chancery, upon application by the Commissioner, may issue to the person an order requiring that person to appear before the Court of Chancery or the designated officer, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the Court may be punished by the Court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Commissioner, or in obedience to the subpoena of the Commissioner or any designated officer or in any proceeding instituted by the Commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of that person may tend to incriminate or subject that person to penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

§ 7320. Injunctions.

Whenever it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the Commissioner may in the Commissioner's own discretion bring an action in the Court of Chancery to temporarily restrain or to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. The Commissioner may also seek, and the Court of Chancery shall upon proper showing grant, such other ancillary relief as is in the public interest including the appointment of a receiver, temporary receiver, conservator, obtaining of an accounting, orders of rescission, orders of restitution, or other relief as may be appropriate in the public interest. The Court shall not require the Commissioner to post a bond.

§ 7321. Escrow of funds.

Whenever the Commissioner shall deem it necessary in the public interest the commissioner may require that the proceeds of sale of the securities of an issuer be held intact until such proceeds aggregate a fixed amount and that such proceeds be held intact under an appropriate agreement of escrow with a bank or trust company approved by the Commissioner.

§ 7322. Criminal penalties.

(a) Fraud of \$50,000 or more; class E felony.--Any person who wilfully violates § 7303 of this title, thereby causing any investor or investors to lose \$50,000 or more, shall upon conviction be fined not more than \$200,000 or imprisoned not more than 5 years at Level V incarceration, or both, per violation.

(b) Fraud of \$10,000 or more; class F felony.--Any person who wilfully violates § 7303 of this title, thereby causing any investor or investors to lose \$10,000 or more, though less than \$50,000, shall upon conviction be fined not more than \$100,000 or imprisoned not more than 3 years at Level V incarceration, or both, per violation.

(c) Other violations; class G felony.--Any person who wilfully violates any provision of this chapter, and whose offense is not covered by subsection (a) or (b) of this section, shall upon conviction be fined not more than \$100,000 or imprisoned not more than 2 years at Level V incarceration, or both, per violation.

(d) No indictment or information may be returned under this chapter more than 5 years after the alleged violation. The Superior Court shall have exclusive jurisdiction of any criminal violations of this chapter.

(e) In addition to the penalties stated above, restitution to any investor or investors may be ordered. Nothing in this chapter limits the power of the State to punish any person for any conduct which otherwise constitutes a crime by statute.

§ 7323. Civil liabilities.

(a) Any person who:

(1) Offers or sells a security in violation of § 7313, § 7304 or § 7311(b) of this title, or of any rule or order under § 7312 of this title which requires the affirmative approval of sales literature before it is used, or of any condition imposed under § 7306(d) of this title.

(2) Offers, sells or purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading (the

buyer or seller not knowing of the untruth or omission), and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying or selling the security from or to him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with the interest at the legal rate from the date of payment costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security.

(b) Every person who directly or indirectly controls a seller or buyer liable under subsection (a), every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such seller or buyer who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale or purchase are also liable jointly and severally with and to the same extent as the seller or buyer, unless the nonseller or nonbuyer who is so liable sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this chapter survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than 3 years after the contract of sale. No person may sue under this section if the buyer received a written offer, before suit and at a time when the buyer owned the security, or if a seller received a written offer before suit, to refund the consideration paid together with interest at the legal rate from the date of payment, less the amount of any income received on the security, and the seller failed to accept the offer within 30 days of its receipt, or if the buyer received such an offer before suit and at a time when the buyer did not own the security, unless the buyer rejected the offer in writing within 30 days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(h) The rights and remedies provided by this chapter are in addition to any other rights

or remedies that may exist at law or in equity.

§ 7324. Judicial review.

(a) Any person aggrieved by an order of the Commissioner may obtain a review of the order in the Court of Chancery by first paying the costs of transcribing the record and, upon completion of the record transcription, by filing in Court, within 60 days after the entry of the order, a written complaint praying that the order be modified or set aside in whole or in part. A copy of the complaint shall be forthwith served upon the Commissioner, and thereupon the Commissioner shall certify and file within 20 days in Court a copy of the filing and evidence upon which the order was entered. If, however, the complainant fails to pay the costs of transcription or the transcription is not completed, the Commissioner shall notify the Court and receive additional time in which to file and certify the record. A continued failure by a complainant to pay the costs of transcription shall result in dismissal of the complaint without any need for the Commissioner to file the record in Court.

(b) When the record has been filed and certified by the Commissioner, the Court of Chancery has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the Commissioner as to the facts, if supported by material and substantial evidence, are conclusive. If, within 20 days of the filing of the record by the Commissioner, either party applies to the Court for leave to adduce material evidence, and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Commissioner, the Court may order the additional evidence to be taken before the Commissioner and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper.

(c) The commencement of the proceedings under subsection (a) of this section does not, unless specifically ordered by the Court, operate as a stay of the Commissioner's order.

§ 7325. Administration of chapter; remedial powers.

(a) This chapter shall be administered by the Attorney General who may designate a Deputy Attorney General to act as Securities Commissioner to be the principal executive officer of a Division of Securities of the Department of Justice to act for the Attorney General administering this chapter. The Securities Commissioner shall have the qualifications of and his or her salary shall be fixed as that of a Deputy Attorney General.

(b) The Commissioner may make, amend and rescind rules, regulations, forms and orders to carry out and define the provisions of this chapter. Such orders may provide for fines, assessment of costs, restitution to investors, conditional or probationary registration, censure or reprimand, special reporting requirements, or other provisions

which the Commissioner determines to be in the public interest. Any person, whether registered or not, who wilfully violates any provision of this chapter, or who aids and abets any person who wilfully violates any provision of this chapter, may be fined in accordance with § 7316(g) of this title and ordered to pay restitution and costs (or to rescind the transaction or transactions and pay costs) if the Commissioner finds it in the public interest, and may be criminally prosecuted under § 7322 of this title.

(c) Whenever it appears that a person has violated this chapter by failing to register or engaging in fraud or other prohibited conduct, the Commissioner may summarily issue a cease and desist order against that person.

(1) Any person who is the subject of such an order shall be given notice of it as soon as practicable and may request a hearing before the Commissioner, which hearing shall be scheduled within 15 days from the date the request is received.

(2) If any person who is the subject of a cease and desist order, or any agent or employee of such person, subsequent to the issuance of the order engages in the prohibited conduct, the Commissioner may certify the facts and apply for a contempt order to any Judge of the Superior Court, who shall upon such application hear the evidence as to the acts complained of. If the evidence warrants, the Judge shall punish such person in the same manner and to the same extent as for a contempt committed before the Superior Court, or shall commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the Superior Court.

(d) The Commissioner shall publish such rules, regulations, forms and orders as such rules specify.

§ 7326. Administrative files.

(a) A document is filed when it is received by the Commissioner or a designee as stipulated by rule or order. Other than filing fees, the Commissioner may waive document filing requirements.

(b) The information contained in or filed with any registration statement, application, report or filing may be made available to the public under such rules as the Commissioner prescribes.

(c) It is unlawful for the Commissioner or any employee to use for personal benefit any information which is filed with or obtained by the Commissioner and which is not made public. No provision of this chapter authorizes the Commissioner or any employee to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter except as provided in subsection (b) of this section above.

(d) No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Commissioner or any of the Commissioner's employees.

§ 7327. Service of process.

Every applicant for registration under this chapter, every person making a notice filing pursuant to this chapter, and every issuer which proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Commissioner, in such form as the Commissioner by rule prescribes, an irrevocable consent appointing the Commissioner or the Commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Commissioner, but it is not effective unless the plaintiff, who may be the Commissioner in a suit, action or proceeding instituted by the Commissioner, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the defendant's or respondent's last address on file with the Commissioner, and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the Court allows.

When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under this section and personal jurisdiction over the person cannot otherwise be obtained in this State, that conduct shall be considered equivalent to the person's appointment of the Commissioner or the Commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made in the same manner as stated above.

§ 7328. Liability of Attorney General.

In no case shall the Attorney General or the Commissioner, or any person designated by them, in the administration of this chapter incur any official or personal liability by instituting an injunction or any judicial proceeding, or administrative order or proceeding.

§ 7329. Investor Protection Fund.

(a) All monies as described in subsection (b) of this section shall be credited by the State Treasurer to a fund to be known as the "Investor Protection Fund."

(b) The Investor Protection Fund will be a revolving fund and shall consist of:

(1) Monies transferred to the revolving fund pursuant to court order or judgment, including costs and attorney's fees, in a securities action brought by the Attorney General or the Securities Commissioner pursuant to this chapter; and

(2) Monies received by the Commissioner pursuant to any settlement agreement.

(c) Any fines, costs or other monies (except those obtained as restitution or rescission) received by the Commissioner as a result of an administrative order (other than a consent order) shall be credited to the General Fund.

(d) If, at the end of any fiscal year, the balance in the Investor Protection Fund exceeds \$100,000, the excess shall be withdrawn from the Investor Protection Fund and deposited in the General Fund.

(e) The Attorney General is authorized to expend from the Investor Protection Fund such monies as are necessary for:

(1) The payment of costs, expenses and charges incurred in the preparation, institution and maintenance of administrative and court actions authorized under this chapter;

(2) The payment of costs, expenses and charges incurred in the training and education of Securities Division personnel; and

(3) The payment of costs, expenses and charges incurred in connection with the dissemination of information to the public, to include the costs of printing copies of this statute and the Commissioner's administrative rules. Monies from the Investor Protection Fund may not be used for any purpose unrelated to the administration or enforcement of this chapter.

(f) The Attorney General and the Securities Commissioner shall provide such reports as to the expenditure of monies from the Investor Protection Fund to the Director of the Office of Management and Budget and the Controller General, and in such detail as they require.

§ 7330. Statute of limitations.

(a) In any administrative, civil or criminal action brought by the Commissioner seeking

registration suspension or revocation, fines, costs, restitution or imprisonment, no more than 5 years shall have passed from the date of the violation to the date of the initiation of the proceeding.

(b) This 5-year limit shall not apply to registration denial proceedings.